

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Lyonsdale Biomass, LLC

Docket Nos. EL06-73-000
QF87-531-010

DECLARATORY ORDER AND ORDER ON RECERTIFICATION

(Issued August 9, 2006)

1. In this order, the Commission grants Lyonsdale Biomass, LLC (Lyonsdale) recertification of its Lyons Fall, New York facility (the Facility) as a qualifying small power production facility (QF) following a change in ownership of the facility, finds that the facility is exempt from sections 205 and 206 of the Federal Power Act¹ (FPA), and grants a limited waiver from section 292.601(c)(1)² of the Commission's regulations.

I. Background

A. May 23 Application

2. On May 23, 2006, Lyonsdale Biomass, LLC filed a request for Commission recertification as a qualifying facility (QF87-531-010), and petition for declaratory order and request for expedited consideration (EL06-73-000) for its generating facility. Lyonsdale requests that the Commission find (1) that the Facility continues to satisfy the Commission's requirement for certification as a qualifying small power production facility following a change in ownership; (2) that the Facility qualifies prospectively for continued exemption from sections 205 and 206 of the FPA, for QFs as set forth in Order No. 671;³ and (3) that Lyonsdale is entitled to a limited waiver of section 292.601(c)(1)

¹ 16 U.S.C. §§ 824d and 824e (2000).

² 18 C.F.R. § 292.601(c)(1) (2006)

³ *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 Fed. Reg. 7852 (February 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006), *order on reh'g*, Order No. 671-A, 71 Fed. Reg. 30,585 (May 30, 2006), FERC Stats. & Regs. ¶ 31,219 (2005), *order on clarification*, 114 FERC ¶ 61,128 (2006).

of the Commission's regulations for past sale of energy during periods when the Facility inadvertently produced a de minimis amount of energy above 20 MW. Lyonsdale requests the limited waiver in response to Order No. 671, which amended section 292.601(c)(1) the Commission's regulations to provide that exemptions from section 205 and 206 of the FPA for sales of energy or capacity apply only to QFs that are no larger than 20 MW.

B. The Facility

3. The Facility generates electricity through the burning of wood and other waste fuel. The Commission certified the Facility as a qualifying small power production facility and a qualifying cogeneration facility by two orders dated June 13, 1990. *Lyonsdale Energy Limited Partnership*, 51 FERC ¶ 61,303 (1990) (order certifying the Facility as a qualifying cogeneration facility) and *Lyonsdale Energy Limited Partnership*, 51 FERC ¶ 61,304 (1990) (order certifying the Facility as a qualifying small power production facility). The Facility was self-recertified as a qualifying small power production facility a number of times, including on August 4, 1998, January 4, 2000, March 24, 2000, and June 9, 2003, in Docket Nos. QF87-531-006, QF87-531-007, QF97-531-008, and QF87-531-009, respectively.

4. Lyonsdale states that under normal operating conditions, the maximum safe and reliable net output of the Facility is 20 MW. Under unusual conditions, and for limited time periods, the Facility has produced a net electric output fractionally more than 20 MW. Since March 17, 2006, the date on which Order No. 671 became effective, the Facility's net electrical output has marginally exceeded 20 MW during several hours on six consecutive days. For those six days, the maximum excess production during any hour was not more than 0.09 MW, totaling less than 1 MWh for the entire period. Since then, Lyonsdale has taken steps to ensure that the Facility's average net electrical output over any 60-minute period does not exceed 20 MW. Specifically, the Facility now has an automatic control system that instantly triggers an audible alarm in its central control room if the net output exceeds 19.9 MW.

II. Notice and Interventions

5. Notice of this filing was published in the *Federal Register*, 71 Fed. Reg. 32,064 (2006), with interventions, protests, or comments due on or before June 22, 2006. None were filed.

III. Discussion

A. Request for Recertification

6. Lyonsdale requests recertification of the Facility as a qualifying small power production facility to reflect the change in ownership of the Facility. The Commission grants the request for recertification because it finds that the Facility continues to satisfy the fuel use and size limitations set forth in the Commission's regulations.⁴

B. Request for Exemption

7. Lyonsdale requests that the Commission find that the Facility qualifies for continued exemption from sections 205 and 206 of the FPA. In Order No. 671, the Commission amended its regulations governing qualifying cogeneration and small power production facilities to provide that exemptions from section 205 and 206 of the FPA for sales of energy or capacity apply only to QFs that are no larger than 20 MW.⁵ The Commission finds that the Facility is a 20 MW facility and is exempt from sections 205 and 206 of the FPA pursuant to revised section 292.601(c)(1) of the Commission's regulations.

C. Request for Limited Waiver

8. Lyonsdale requests a limited waiver from section 292.601(c)(1) for the period of March 26, 2006 through March 31, 2006, during which the Facility's net electrical output fractionally exceeded 20 MW for certain hours. The Commission grants the limited waiver because the Facility's frequency of production over 20 MW and the amount of energy produced over 20 MW were de minimis and inadvertent, and Lyonsdale has implemented systems to ensure future compliance with the regulation.

The Commission orders:

(A) The Facility is hereby recertified as a small power production facility.

(B) The Facility qualifies for exemption from sections 205 and 206 of the Federal Power Act for sales of energy or capacity pursuant to revised section 292.601(c)(1) of the Commission's regulations.

⁴ 18 C.F.R. § 292.204 (2006).

⁵ Order No. 671 at P 98 n. 24. *See also* revised 18 C.F.R. § 292.601(c)(1) (2006).

(C) Lyonsdale's requested limited waiver of section 292.601(c)(1) for the period of March 26 through March 31, 2006, as described in the body of this order, is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.